

House Bill 932

By: Representative Bordeaux of the 162<sup>nd</sup>

A BILL TO BE ENTITLED  
AN ACT

To amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, so as to change certain definitions relating to habitual violators; to change certain provisions relating to dates after which offenses occurred; to change certain provisions relating to the time period during which violations of Code Section 40-6-391 must occur to be declared a habitual violator; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is amended by striking subsections (a) through (d) of Code Section 40-5-58, relating to habitual violators and probationary licenses, and inserting in their places the following:

"(a) As used in this Code section, 'habitual violator' means:

(1) Any ~~any~~ person who has been arrested and convicted within the United States three or more times within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the most recent arrest for which a conviction was obtained, of:

~~(1) Committing~~ committing any offense covered under Code Section 40-5-54 or ~~Code Sections 40-6-391~~ Code Sections 40-6-393 through 40-6-395 or violating a federal law or regulation or the law of any state or a valid municipal or county ordinance substantially conforming to any offense covered under Code Section 40-5-54 or ~~Code Sections 40-6-391~~ Code Sections 40-6-393 through 40-6-395; or

~~(2) Singularly or in combination,~~ Any person who has been arrested and convicted within the United States three or more times with a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the most recent arrest for which a conviction was obtained, of committing any of the offenses described in paragraph (1) of this subsection, singularly or in combination;

1 (3) Any person who has been arrested and convicted within the United States three or  
2 more times within a five-year period of time, as measured from the dates of previous  
3 arrests for which convictions were obtained to the date of the most recent arrest for which  
4 a conviction was obtained, of committing any of the offenses described in paragraph (1)  
5 of this subsection, singularly or in combination with one or two violations of Code  
6 Section 40-6-391 or violating a federal law or regulation or the law of any state or a valid  
7 municipal or county ordinance substantially conforming to a violation of Code Section  
8 40-6-391; or

9 (4) Any person who has been arrested and convicted within the United States three or  
10 more times within a ten-year period of time, as measured from the dates of previous  
11 arrests for which convictions were obtained to the date of the most recent arrest for which  
12 a conviction was obtained, of committing a violation of Code Section 40-6-391 or  
13 violating a federal law or regulation or the law of any state or a valid municipal or county  
14 ordinance substantially conforming to an offense of Code Section 40-6-391.

15 (b) When the records of the department disclose that any person has been arrested and  
16 convicted of a violation of Chapter 6 of this title, or of a valid local ordinance adopted  
17 pursuant thereto, of an offense occurring on or after ~~January 1, 1976~~ the effective date of  
18 this Code section, which record of arrest and conviction, when taken with and added to  
19 previous arrests and convictions of such person as contained in the files of the department,  
20 reveals that such person is a habitual violator as defined in subsection (a) of this Code  
21 section, the department shall forthwith notify such person that upon the date of notification  
22 such person has been declared by the department to be a habitual violator, and that  
23 henceforth it shall be unlawful for such habitual violator to operate a motor vehicle in this  
24 state unless otherwise provided in this Code section. Notice shall be given by certified mail  
25 or statutory overnight delivery, with return receipt requested; or, in lieu thereof, notice may  
26 be given by personal service upon such person. In the event that at the time of  
27 determination the habitual violator had been issued a driver's license, such license shall be  
28 revoked by such notice and shall be surrendered to the department within ten days of  
29 notification of such determination. For the purposes of this chapter, notice given by  
30 certified mail or statutory overnight delivery with return receipt requested mailed to the  
31 person's last known address shall be prima-facie evidence that such person received the  
32 required notice. In addition to the procedure set forth in this subsection, the sentencing  
33 judge or prosecutor in a conviction which conviction classifies the defendant as a habitual  
34 violator may, at the time of sentencing, declare such defendant to be a habitual violator.  
35 The judge or prosecutor shall, when declaring a defendant to be a habitual violator, then  
36 give personal notice to such defendant on forms provided by the department that henceforth  
37 it shall be unlawful for such habitual violator to operate a motor vehicle in this state unless

1 otherwise provided in this Code section. The judge or prosecutor, as the case may be, shall  
2 within three days forward to the department the order declaring that the defendant is a  
3 habitual violator, the notice of service, with the defendant's driver's license or a sworn  
4 affidavit of the defendant declaring that the driver's license has been lost, and the  
5 department's copy of the uniform citation or the official notice of conviction attached  
6 thereto.

7 (c)(1) Except as provided in paragraph (2) of this subsection or in subsection (e) of this  
8 Code section, it shall be unlawful for any person to operate any motor vehicle in this state  
9 after such person has received notice that his or her driver's license has been revoked as  
10 provided in subsection (b) of this Code section, if such person has not thereafter obtained  
11 a valid driver's license. Any person declared to be a habitual violator and whose driver's  
12 license has been revoked under this Code section and who is thereafter convicted of  
13 operating a motor vehicle before the department has issued such person a driver's license  
14 or before the expiration of five years from such revocation, whichever occurs first, shall  
15 be punished by a fine of not less than \$750.00 or by imprisonment in the penitentiary for  
16 not less than one nor more than five years, or both. Any person declared to be a habitual  
17 violator and whose driver's license has been revoked and who is convicted of operating  
18 a motor vehicle after the expiration of five years from such revocation but before the  
19 department has issued such person a driver's license shall be guilty of a misdemeanor.

20 (2) Any person declared to be a habitual violator as a result of three or more convictions  
21 of violations of Code Section 40-6-391 within a ~~five-year~~ ten-year period of time, as  
22 measured from the dates of previous arrests for which convictions were obtained to the  
23 date of the most recent arrest for which a conviction was obtained, and who is thereafter  
24 convicted of operating a motor vehicle during such period of revocation, prior to the  
25 issuance of a probationary license under subsection (e) of this Code section or before the  
26 expiration of five years shall be guilty of the felony of habitual impaired driving and shall  
27 be punished by a fine of not less than \$1,000.00 or by imprisonment in the penitentiary  
28 for not less than one nor more than five years, or both.

29 (d) Notwithstanding any contrary provisions of Code Section 17-7-95, for the purposes of  
30 this Code section, any plea of nolo contendere entered and accepted after ~~January 1, 1976,~~  
31 the effective date of this Code section shall be considered a conviction."

## 32 SECTION 2.

33 Said title is further amended in Code Section 40-5-62, relating to periods of revocation,  
34 conditions to restoration of license or issuance of new license, by striking subsection (b) of  
35 said Code section and inserting in its place the following:

1 "(b) The department shall not issue a new license nor restore a person's suspended license  
2 or nonresident's operating privilege unless and until it is satisfied after investigation of the  
3 character, habits, and driving ability of such person that it will be safe to grant the privilege  
4 of driving a motor vehicle on the public highways. Notwithstanding subsection (a) of this  
5 Code section or any other provision of this title, the department shall not issue a new  
6 license to any person whose license was revoked as a habitual violator for three violations  
7 of Code Section 40-6-391 within a ~~five-year~~ ten-year period unless and until such person  
8 submits proof of completion of an approved DUI Alcohol or Drug Use Risk Reduction  
9 Program. The department may issue rules and regulations providing for reinstatement  
10 hearings. In the case of a revocation pursuant to Code Section 40-5-58, the department shall  
11 charge a fee of \$210.00 or \$200.00 if processed by mail in addition to the fee prescribed  
12 by Code Section 40-5-25 to issue a new driver's license to a person whose driver's license  
13 has been revoked."

### 14 SECTION 3.

15 Said title is further amended in Code Section 40-5-63, relating to periods of suspension and  
16 conditions to return of license, by striking paragraph (3) of subsection (a) of said Code  
17 section and inserting in its place the following:

18 "(3) Upon the third conviction of ~~any such~~ an offense listed in Code Section 40-5-54  
19 within five years, as measured from the dates of previous arrests for which convictions  
20 were obtained to the date of the current arrest for which a conviction is obtained, or upon  
21 the third conviction of a violation of Code Section 40-6-391 within ten years, as measured  
22 from the dates of previous arrests for which convictions were obtained to the date of the  
23 current arrest for which a conviction is obtained, such person shall be considered a  
24 habitual violator, and said license shall be revoked as provided for in paragraph (1) of  
25 subsection (a) of Code Section 40-5-62. For purposes of this paragraph, a plea of nolo  
26 contendere and all previous accepted pleas of nolo contendere to an offense listed in Code  
27 Section 40-5-54 within such five-year period shall constitute a conviction. For the  
28 purposes of this paragraph, a plea of nolo contendere and all prior accepted pleas of nolo  
29 contendere to a charge of violating Code Section 40-6-391 within ~~five~~ ten years, as  
30 measured from the dates of previous arrests for which convictions were obtained or pleas  
31 of nolo contendere were accepted to the date of the current arrest for which a plea of nolo  
32 contendere is accepted, shall be considered and counted as convictions."

**SECTION 4.**

Said title is further amended in Code Section 40-5-63.1, relating to clinical evaluation and substance abuse treatment programs for certain offenders, by striking said Code section and inserting in its place the following:

"40-5-63.1.

In addition to any and all other conditions of license reinstatement, issuance, or restoration under Code Section 40-5-58, 40-5-62, or 40-5-63, any person with two or more convictions of violation of Code Section 40-6-391 within ~~five~~ ten years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be required to undergo a clinical evaluation and, if indicated by such evaluation, must complete a substance abuse treatment program, provided that such evaluation and treatment shall be at such person's expense except as otherwise provided by Code Section 37-7-120. Acceptable proof of completion of such a program must be submitted to the department prior to license reinstatement, issuance, or restoration. For purposes of this Code section, a plea of nolo contendere to a charge of violating Code Section 40-6-391 and all prior accepted pleas of nolo contendere within ~~five~~ ten years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a plea of nolo contendere is accepted, shall be considered and counted as convictions."

**SECTION 5.**

Said title is further amended in Code Section 40-5-67.2, relating to terms and conditions for suspension of license under subsection (c) of Code Section 40-5-67.1, by striking paragraph (3) of subsection (a) of said Code section and inserting in its place the following:

"(3) Upon the third or subsequent suspension pursuant to subsection (c) of Code Section 40-5-67.1 within ~~five~~ ten years, as measured from the dates of previous arrests for which suspensions were obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for five years. A driver's license suspended pursuant to Code Section 40-5-67.1 shall not become valid and shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources and pays the prescribed restoration fee. The driver may apply for a probationary license pursuant to Code Section 40-5-58 after the expiration of two years from the effective date of suspension."

**SECTION 6.**

Said title is further amended in Code Section 40-5-75, relating to suspension of licenses by operation of law, by striking paragraph (3) of subsection (a) of said Code section and inserting in its place the following:

"(3) Upon the third conviction of ~~any such offense~~ possession, distribution, manufacture, cultivation, sale, or transfer of; or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer a controlled substance or marijuana, in violation of subsection (b) of Code Section 16-13-2; subsection (a), (b), or (j) of Code Section 16-13-30; or Code Section 16-13-33 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, or upon the third conviction of driving or being in actual physical control of any moving vehicle while under the influence of such a substance in violation of paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391 within ten years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, such person's license shall be suspended for a period of five years. At the end of two years, the person may apply to the department for a three-year driving permit upon compliance with the following conditions:"

**SECTION 7.**

Said title is further amended in Code Section 40-5-85, relating to reinstatement of licenses suspended for driving under influence of alcohol or drugs, red stripe on licenses for repeat offenders, by striking said Code section and inserting in its place the following:

"40-5-85.

Notwithstanding any other provision of this chapter, any person convicted within ~~five~~ ten years of his or her first conviction as measured in paragraph (2) of subsection (c) of Code Section 40-6-391 for a second time of the offense of driving under the influence of alcohol or drugs in violation of Code Section 40-6-391 shall, upon compliance with all other requirements for reinstatement of his or her license as provided for in this chapter, be issued a driver's license which may bear a red stripe thereon. After seven years with no additional convictions for driving under the influence of alcohol or drugs any such person shall be issued a regular driver's license without such red stripe provided that he or she is otherwise entitled to such license under the laws of this state."

**SECTION 8.**

Said title is further amended in Code Section 40-6-391, relating to driving under the influence of alcohol, drugs, or other intoxicating substances, penalties, publication of notice

1 of conviction for persons convicted for second time, and endangering a child, is amended by  
2 striking paragraph (3) of subsection (c) and paragraph (1) of subsection (j) of said Code  
3 section and inserting in their places the following:

4 "(3) For the third or subsequent conviction within a ~~five-year~~ ten-year period of time, as  
5 measured from the dates of previous arrests for which convictions were obtained or pleas  
6 of nolo contendere were accepted to the date of the current arrest for which a conviction  
7 is obtained or a plea of nolo contendere is accepted."

8 "(j)(1) The clerk of the court in which a person is convicted a second or subsequent time  
9 under subsection (c) of this Code section within ~~five~~ ten years, as measured from the  
10 dates of previous arrests for which convictions were obtained or pleas of nolo contendere  
11 were accepted to the date of the current arrest for which a conviction is obtained or a plea  
12 of nolo contendere is accepted, shall cause to be published a notice of conviction for each  
13 such person convicted. Such notices of conviction shall be published in the manner of  
14 legal notices in the legal organ of the county in which such person resides or, in the case  
15 of nonresidents, in the legal organ of the county in which the person was convicted. Such  
16 notice of conviction shall be one column wide by two inches long and shall contain the  
17 photograph taken by the arresting law enforcement agency at the time of arrest, name and  
18 address of the convicted person, and the date, time, place of arrest, and disposition of the  
19 case and shall be published once in the legal organ of the appropriate county in the  
20 second week following such conviction or as soon thereafter as publication may be  
21 made."

## 22 SECTION 9.

23 Chapter 4 of Title 42 of the Official Code of Georgia Annotated is amended in Code Section  
24 42-4-7, relating to maintenance of inmate record by sheriff and earned time allowances, by  
25 striking subparagraph (A) of paragraph (1) of subsection (b) and inserting in its place the  
26 following:

27 "(b)(1) The sheriff, chief jailer, warden, or other officer designated by the county as  
28 custodian of inmates confined as county inmates for probation violations of felony  
29 offenses or as provided in subsection (a) of Code Section 17-10-3 may award earned time  
30 allowances to such inmates based on institutional behavior. Earned time allowances shall  
31 not be awarded which exceed one-half of the period of confinement imposed, except that  
32 the sheriff or other custodian may authorize the award of not more than four days' credit  
33 for each day on which an inmate does work on an authorized work detail; provided,  
34 however, that such increased credit for performance on a work detail shall not apply to  
35 an inmate who is incarcerated for:

1 (A) A second or subsequent offense of driving under the influence under Code Section  
2 40-6-391 within a ~~five-year~~ ten-year period of time, as measured from the date of any  
3 previous arrest for which a conviction was obtained or a plea of nolo contendere was  
4 accepted to the date of the current arrest for which a conviction is obtained or a plea of  
5 nolo contendere is accepted;"

6 **SECTION 10.**

7 Said title is further amended in Code Section 42-8-111, relating to court ordered installation  
8 of ignition interlock devices, completion of alcohol and drug use risk reduction program,  
9 notice of requirements, and fees for driver's license, by striking subsection (a) of said Code  
10 section and inserting in its place the following:

11 "(a) In addition to any other provision of probation, upon a second or subsequent  
12 conviction of a resident of this state for violating Code Section 40-6-391 within ~~five~~ ten  
13 years, as measured from the dates of previous arrests for which convictions were obtained  
14 to the date of the current arrest for which a conviction is obtained, for which such person  
15 is granted probation, the court shall order as conditions of probation that:"

16 **SECTION 11.**

17 This Act shall become effective on July 1, 2005.

18 **SECTION 12.**

19 All laws and parts of laws in conflict with this Act are repealed.